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6 Attorneys for Jay Jette and Eric Rosoff
7 Real Parties In Interest

8
9 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF LOS ANGELES
11

12 WILLIAM TAYLOR,

13 Plaintiff,

14 v.

15 BURBANK POLICE DEPARTMENT; CITY
16 OF BURBANK; AND DOES 1 THROUGH
17 100, INCLUSIVE.

18 Defendants.

19 JAY JETTE AND ERIC ROSOFF,

20 Real Parties In Interest,
21
22

Case No.: 422252

DECLARATION OF LIEUTENANT RON
CARUSO IN SUPPORT OF MOTION
FOR PROTECTIVE ORDER SEALING
PLAINTIFF WILLIAM TAYLOR'S
MOTIONS FOR DISCOVERY OF PEACE
OFFICER PERSONNEL AND OTHER
RECORDS

Date: October 15, 2010

Time: 8:30 a.m.

Dept.: 50

Honorable John Shepard Wiley, Jr.
[Evidence Code § 1045(d)]

23
24 I, Lieutenant Ron Caruso, declare that:

- 25 1. The facts stated herein are personally known to me and I have first-hand
26 knowledge thereof. If called upon to do so, I would and could competently testify
27 hereto under oath.
28

- 1 2. I am a Lieutenant in the Administrative Division of the Burbank Police
2 Department ("BPD"). In that capacity, I have responsibility for the administration
3 and maintenance of the personnel files and records of the BPD, which files and
4 records constitute confidential peace officer personnel records under California
5 Penal Code section 832.7.
- 6 3. The BPD maintains confidential personnel files on all employees in the BPD,
7 both sworn and non-sworn. Consistent with the requirements of Penal Code
8 section 832.5, each sworn police officer has a "General Personnel File", which
9 contains primary records regarding the officer's employment, including such
10 things as evaluations, assignments, status changes, and imposed discipline. In
11 addition to the "General Personnel File" (as defined in PC § 832.5(d)(1)), the
12 BPD also keeps files pertaining to internal investigations of BPD police officers
13 who have been accused of misconduct – whether initiated through a citizen's
14 complaint or internally within the Department.
- 15 4. All personnel files pertaining to the sworn peace officers of the Burbank Police
16 Department are confidential as provided by Penal Code § 832.7 and are kept in
17 the office of the Chief of Police in a room with a locking door. The only personnel
18 with keys are the Chief, the Chief's Executive Assistant, the Deputy Chief, the
19 Police Administrator, the Building Manager, the three police Captains, and their
20 two shared secretaries. A secondary archive room is maintained for older files.
21 The only persons with a key to this secondary room are the Deputy Chief, the
22 Building Manager and the Chief's Executive Assistant. These files are not in an
23 area that is available to or accessible by any member of the Burbank Police
24 Department. They are accessible only to those officers whose assignments
25 require them to have access. The only BPD personnel who have a need for
26 access to the files are:
- 27 • Those officers whose assigned duties involve investigating complaints
28 and/or allegations of misconduct against individual police officers. Their

1 need for access would be only to those files that they are actively
2 investigating and no others. Once the investigation is concluded they
3 have no need or authority to keep, copy, or in any other manner have
4 access to the file or information contained therein.

- 5 • Those officers who are required by order of a court to appear in court for
6 an *in camera* review by the court after a hearing on a noticed motion for
7 peace officer personnel files (commonly known as a *Pitchess* motion). In
8 such cases, the officer (generally holding the rank of Lieutenant or above)
9 would be told by the City Attorney's office which officers' files the court
10 has ordered reviewed, and only those files would be pulled. When any
11 files are pulled, there is a notation left in the place where the file would
12 normally be that it has been checked out for court, and the file would be
13 returned to its place immediately upon return from court. A log is also
14 maintained to document when files are removed (and returned), for what
15 purpose, and the name of the employee who had the file.
- 16 • Those BPD supervisors (usually at the Lieutenant level or above) who
17 need to know about past discipline in order to determine the appropriate
18 level of discipline for a given incidence of misconduct (for example, if this
19 is the second or third time an officer has been disciplined for the same or
20 similar conduct, it can affect the penalty level, etc...).
- 21 • Officers specifically assigned by the Deputy Chief who are responding to a
22 request from the City Attorney's office or other duly retained counsel in
23 conjunction with state or federal litigation or anticipated litigation.
- 24 • Under supervision of authorized staff, officers are permitted under the
25 government code to review the contents of their general personnel files.

26 5. The BPD has not authorized former employee William Taylor to release any
27 information pertaining to internal affairs investigations of current or former BPD
28

1 officers. Such information is confidential and its unauthorized disclosure violates
2 Penal Code § 832.7.

3
4 I declare under penalty of perjury that the foregoing is true and correct.

5 Executed this 22 of September, 2010, at Burbank, California.

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8 

9 Lieutenant Ron Caruso

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9 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF LOS ANGELES

11 WILLIAM TAYLOR,

12 Plaintiff,

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15 BURBANK POLICE DEPARTMENT; CITY
16 OF BURBANK; AND DOES 1 THROUGH
100, INCLUSIVE.

17 Defendants.

18 JAY JETTE AND ERIC ROSOFF,

19
20 Real Parties In Interest

Case No.: 422252

DECLARATION OF TIM STEHR IN
SUPPORT OF MOTION FOR
PROTECTIVE ORDER SEALING
PLAINTIFF WILLIAM TAYLOR'S
MOTIONS FOR DISCOVERY OF PEACE
OFFICER PERSONNEL AND OTHER
RECORDS

Date: October 15, 2010

Time: 8:30 a.m.

Dept.: 50

Honorable John Shepard Wiley, Jr.
[Evidence Code § 1045(d)]

21
22
23 I, Tim Stehr, declare that:

- 24 1. The facts stated herein are personally known to me and I have first-hand
25 knowledge thereof. If called upon to do so, I would and could competently testify
26 thereto under oath.
- 27 2. I was the Chief of Police of the Burbank Police Department ("BPD") from August
28 2007 until December 31, 2009. During that time, plaintiff William Taylor was a

1 Captain with the BPD. From August 2007 to approximately May 4, 2009, Mr.
2 Taylor was the Captain assigned to the Deputy Chief role/position. During the
3 time he was assigned to the Deputy Chief position, Mr. Taylor supervised and
4 oversaw the Community Outreach and Professional Standards Bureau, which
5 was the Bureau that conducted internal investigations of allegations of
6 misconduct against BPD officers. In that capacity, Mr. Taylor had access to BPD
7 internal affairs files and investigations and was responsible for reviewing the
8 results of those investigations.

9 3. During the time that I was the Police Chief, the BPD maintained confidential
10 personnel files on all employees in the BPD, both sworn and non-sworn.
11 Consistent with the requirements of Penal Code § 832.5, each sworn police
12 officer had a "General Personnel File", which contained primary records
13 regarding the officer's employment, including things such as evaluations,
14 assignments, status changes, and imposed discipline. In addition to the "General
15 Personnel File" (as defined in Penal Code § 832.5(d)(1)), the BPD also kept files
16 containing internal investigations of police officers who had been accused of
17 misconduct – whether initiated through a citizen's complaint or internally within
18 the Department.

19 4. During my tenure as Chief, all personnel records of sworn peace officers of the
20 BPD were confidential as provided by Penal Code § 832.7, and were kept in the
21 office of the Chief of Police in a room with a locking door. The only personnel
22 with keys were the Chief, the Chief's Executive Assistant, the four police
23 Captains (of which Mr. Taylor was one), the Police Administrator, the Building
24 Manager, and their two shared secretaries. The records were not in an area that
25 was available to or accessible by any member of the BPD. They were accessible
26 only to those officers whose assignments required them to have access. The
27 only BPD personnel who had a need for access to the files were:

- 28 • Those officers whose assigned duties involve investigating complaints
and/or allegations of misconduct against individual police officers. Their

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need for access would be only to those files that they were actively investigating. Once a particular investigation was concluded they would have no need or authority to keep, copy, or in any other manner have access to the file or information contained therein.

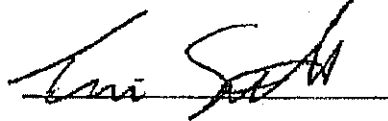
- Those officers who were required by order of a court to appear in court for an *in camera* review by the court after a hearing on a noticed motion for peace officer personnel files (commonly known as a *Pitchess* motion). In such cases, the officer (generally holding the rank of Lieutenant or above) would be told by the City Attorney's office which officers' files the court had ordered reviewed, and only those files would be pulled. When any files were pulled, there was a notation left in the place where the file would normally be that it had been checked out for court. The file would be put back in its place immediately upon return from court.
- Those BPD supervisors (usually at the Lieutenant level or above) who needed to know about past discipline in order to determine the appropriate level of discipline for a given incidence of misconduct (for example, if this is the second or third time an officer had been disciplined for the same or similar conduct, it can affect the penalty level, etc...). This category would include the Captain who was in charge of Internal Affairs, which was William Taylor from August of 2007 until May of 2009.
- Officers specifically assigned to the personnel division who were responding to a request from the City Attorney's office or other duly retained counsel in conjunction with state or federal litigation or anticipated litigation.

5. At no time during my tenure did I authorize William Taylor to publicly disclose the contents of internal affairs investigations or files or any other confidential police personnel records.

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I declare under penalty of perjury that the foregoing is true and correct.
Executed this 20 of September, 2008, at Burbank, California.



Tim Stehr

LA #4828-1646-7975 v1

Sep

Original signature will be filed with the Court

1 **DECLARATION OF MICHAEL P. STONE**
2 **IN SUPPORT OF MOTION FOR ORDER UNDER**
3 ***EVIDENCE CODE* § 1045 (d)**

4 I, Michael P. Stone, declare under penalty of perjury according to the laws of the State
5 of California:

6 1. I am counsel of record for Real Parties In Interest Jay Jette and Eric Rosoff
7 herein. I am admitted to practice before all courts of this State. My State Bar Number is
8 91142.

9 2. I make this declaration from my own personal knowledge unless the contrary
10 expressly appears. If called to testify, I would testify in conformity with this declaration.

11 3. I attended a court hearing on the City's *ex parte* application for an order to
12 require plaintiff Taylor to file his §1043 motions under seal, for substantially similar reasons
13 to those presented in this motion.

14 4. Regrettably, this *ex parte* application failed, whereupon the City announced its
15 intention to seek an appellate court writ and requested that this Court stay (in effect) the
16 plaintiff from filing his 1043 motions in the public record until further ruling of this Court,
17 or until the Court of Appeal has an opportunity to act on the writ petition.

18 5. While the Court was considering this request on behalf of the City, below-
19 signed counsel on behalf of Real Parties announced his intention to file this motion pursuant
20 to *Evidence Code* § 1045(d), given the express statutory authority in § 1045(d) for the Court
21 to grant the relief "... upon motion seasonably made ... by the officer whose records are
22 sought ..."

23 6. Whereupon, this Court set the date of October 15, 2010 at 0830 in Department
24 50 for the hearing on this motion. Counsel understands that this motion, being independently
25 made on behalf of Jette and Rosoff will proceed regardless of the results of any other contest
26 between the plaintiff and the City, or between the Court of Appeal and the parties and the
27 trial court.

7. As and for support for the filing and maintenance of these “§ 1043 motions” *under seal*, I say that in order to fairly support Jette’s and Rosoff’s request for these orders with admissible evidence, it is necessary that this Court *see and read the § 1043 motions in order to decide whether they should be ordered to be filed, if at all, under seal.*

8. Likewise, in order for the Court to fairly consider the merits of *the instant motion*, it is necessary that this Court see and read the § 1043 motions.

9. Equally clear however, is that if this motion is required to be filed as a public record, the entire exercise will be a waste of everyone's and the Court's time and resources, because the harm sought to be averted will be inflicted by the very procedural device employed to avert the harm. Or, more simply, "the cat will be out of the bag" so to speak.

10. During the colloquy with the Court at the City's *ex parte* application, the Court remarked more than once to my recollection, that it had not seen the § 1043 motions and expressed its consternation in having to sort out the equities without having the necessary evidence upon which to rely in doing so. Counsel takes this as a further indication from the Court that it has so far not had the benefit of seeing the necessary evidence (the § 1043 motions) upon which to make a ruling.

11. Previously lodged conditionally under seal, the Notices of Motion, Memoranda of Points and Authorities, and Declarations of Christopher Brizzolara, pertaining to Jay Jette and Eric Rosoff speak for themselves in support of the instant motion for a protective order. Counsel undersigned is unaware of any prejudice to plaintiff Taylor if he is required to file these § 1043 motions and supporting papers under seal. Inasmuch as the other party, the City of Burbank, is seeking the same order, there is no prejudice to its interests either.

I declare under penalty of perjury according to the laws of the State of California that the foregoing is true and correct and that this declaration is executed at Pasadena, California on September 2, 2010.

Michael P. Stone
Michael P. Stone

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10 Attorneys for Real Parties In Interest
11 Jay Jette and Eric Rosoff

12 **SUPERIOR COURT OF CALIFORNIA**

13 **COUNTY OF LOS ANGELES**

14 WILLIAM TAYLOR,

15 Plaintiff,

16 v.

17 CITY OF BURBANK and DOES 1
18 through 100, inclusive,

19 Defendants.

20 JAY JETTE AND ERIC ROSOFF

21 Real Parties In Interest

Case No. BC 422252

NOTICE AND MOTION BY REAL PARTIES
IN INTEREST JAY JETTE AND ERIC
ROSOFF FOR A PROTECTIVE ORDER
SEALING PLAINTIFF WILLIAM TAYLOR'S
MOTIONS FOR DISCOVERY OF PEACE
OFFICER PERSONNEL AND OTHER
RECORDS PERTAINING TO THEM OR,
ALTERNATIVELY, FOR A PROTECTIVE
ORDER PENDING APPLICATION FOR
WRIT RELIEF TO COURT OF APPEAL;
MEMORANDUM OF POINTS AND
AUTHORITIES; DECLARATIONS OF JAY
JETTE AND ERIC ROSOFF (PREVIOUSLY
FILED ON SEPTEMBER 22, 2010), TIM
STEHRE, RON CARUSO AND MICHAEL P.
STONE; PROPOSED ORDER

[EVIDENCE CODE §1045(d)]

Date: October 15, 2010

Time: 8:30 a.m.

Dept.: 50

Honorable John Shepard Wiley, Jr.

22 TO THE COURT AND TO PLAINTIFF AND HIS ATTORNEYS OF RECORD:

23 PLEASE TAKE NOTICE that on October 15, 2010, or as soon thereafter as this matter

24 - 1 -

25 MOTION FOR PROTECTIVE ORDER RE PLAINTIFF'S MOTIONS FOR DISCOVERY OF PEACE OFFICER
26 PERSONNEL AND OTHER RECORDS RE JAY JETTE AND ERIC ROSOFF

27 a/22

1 may be heard in Department 50 of the above entitled court, located at 111 North Hill Street, Los
2 Angeles, California, Real Parties In Interest Jay Jette ("Jette") and Eric Rosoff ("Rosoff") will, by
3 this motion, move the Court for issuance of a protective order pursuant to *California Code of*
4 *Civil Procedure* § 1045(d) sealing plaintiff William Taylor's two (2) motions, titled "Motion for
5 Discovery of Peace Officer Personnel and Other Records regarding Burbank Police Department
6 Lieutenant Jay Jette; Memorandum of Points and Authorities; Declaration of Christopher
7 Brizzolara" and "Motion for Discovery of Peace Officer Personnel and Other Records regarding
8 Burbank Police Department Lieutenant Eric Rosoff; Memorandum of Points and Authorities;
9 Declaration of Christopher Brizzolara" (collectively, the *Evidence Code* § 1043 motions") as
10 well as any Opposition and Reply Memoranda and related papers regarding the § 1043 motions.
11 Alternatively, Jette and Rosoff request that the Court issue an order that the above-described
12 papers be sealed until such time as they can seek writ relief from the Court of Appeal. Good
13 cause exists for sealing these records because they purport to reveal information from confidential
14 peace officer personnel records protected by *California Penal Code* § 832.7 and *California*
15 *Evidence Code* §§ 1043 and 1046.

16 This Motion is based on this Notice of Motion and Motion, the Declarations of Michael P.
17 Stone, Tim Stehr, and Ron Caruso filed concurrently herewith, the Declarations of Jay Jette and
18 Eric Rosoff filed in support of their ex parte applications to lodge plaintiff's § 1043 motion under
19 seal with the Court, the papers on file in this action, and upon such other and further evidence as
20 may be presented at the hearing on this matter.

21
22
23 Dated: September 22, 2010

STONE BUSAILAH, LLP

24
25 By: Michael P. Stone
26 Michael P. Stone,
27 Attorneys for Real Parties In Interest Jay
28 Jette and Eric Rosoff

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 IN SUPPORT OF MOTION PURSUANT TO EVIDENCE CODE §1045(d)

3
4 **I. Introduction.**

5 Plaintiff William Taylor ("plaintiff") is a former Captain with the Burbank Police
6 Department. [Declaration of Tim Stehr ("Stehr Decl."), ¶ 2.] From August 2007 to May 2009,
7 plaintiff was the Captain assigned to the Deputy Chief position. [Id.] In this role he supervised
8 and oversaw the Community Outreach and Professional Standards Bureau of the Burbank Police
9 Department, which is the Bureau that investigates allegations that Burbank officers have engaged
10 in misconduct [Id.] In that capacity, plaintiff had access to internal affairs investigations of
11 Burbank police officers and other confidential police personnel records. [Id.] In addition, he had
12 the responsibility of reviewing and making determinations and/or recommendations regarding the
13 charges and discipline connected to such investigations. [Id.]

14 Plaintiff's *Evidence Code* § 1043 ("Pitchess") motions (hereafter "§ 1043 motions")
15 contend that, in the course of his duties, plaintiff was involved in various alleged personnel
16 matters and investigations, and seeks to obtain documents and information pertaining to those
17 investigations in order to make out his retaliation claims. [See: § 1043 motion at 6:11- 7:3, 9:12-
18 10:2.] In arguing that good cause exists for the production of these documents, plaintiff discloses
19 information supposedly revealed in these investigations and personnel records.¹ [See: plaintiff's
20 motion for Jette's records, at Notice, pp. ii:11-vi:21, Memorandum of Points and Authorities
21 ("MPA"), pp. 1:10-21, 4:3-13, 6:13-26, 9:23-24, 13:9-13, Brizzolara Decl., ¶¶ 3-4, 6-7, 11, 12(a)-
22 12(dd); plaintiff's motion for Rosoff's records, at Notice pp. ii:11- iv: 9, v:1- 7, v: 21-24; MPA,
23 pp. 1:11- 7:8, 8:20-27, 11:5-8, 14:20-26; Brizzolara Decl., ¶¶ 3- 24, 29-31, 34, 35(a)-35(y).]

24 Although the declarations in support of the § 1043 motions are made by counsel on
25 information and belief, they plainly set forth information that plaintiff is claiming he acquired in

26 ¹ Although much of what is contained in the motions is inaccurate, plaintiff does, among other things,
27 purport to disclose the existence of confidential personnel investigations in violation of *Penal Code* §
28 832.7, and claim that he was retaliated against because of positions he took on the matters at issue in those
alleged investigations.

1 his role as a manager in the Burbank Police Department.² [*Id.*] The Burbank Police Department
2 keeps its personnel records in a manner designed to ensure and maintain the confidentiality
3 provided by *Penal Code* § 832.7. [Stehr Decl., ¶ 4; Declaration of Ron Caruso (“Caruso Decl.”),
4 ¶ 4.] Once the § 1043 motions are filed with the Court, they will become public records open to
5 inspection by anyone and everyone who chooses to look at them. Publication of plaintiff’s
6 assertions of the details of what he claims he saw in other officers’ confidential personnel records
7 not only violates *Penal Code* § 832.7, it will cause those officers to suffer annoyance and
8 embarrassment and be stigmatizing and oppressive. [Declaration of Jay Jette filed on September
9 22, 2010 in support of Ex Parte Application to Lodge Pitchess Motion Under Seal (“Jette Decl.”),
10 ¶ 3; Declaration of Eric Rosoff filed on September 22, 2010 in support of *Ex Parte* Application to
11 Lodge *Pitchess* Motion Under Seal (“Rosoff Decl.”), ¶ 3.] Thus, the Court should order that the
12 *Pitchess* Motions and supporting papers be filed under seal, as well as any and all opposition and
13 reply papers.

14
15 **II. Penal Code § 832.7 Protects All Of The Information In An Officer’s Confidential**
16 **Police Personnel Files Regardless Of Where Else That Information Might Be Found.**

17 *California Penal Code* § 832.7 provides that peace officer personnel records, and
18 information obtained from these records, are privileged and confidential and **shall not be**
19 **disclosed in any criminal or civil proceeding** except by discovery pursuant to *Evidence Code*
20 §1043. *Penal Code* § 832.7 provides in part: “peace officer personnel records . . . are confidential
21 and shall not be disclosed in any criminal or civil proceeding, except by discovery pursuant to
22 Section 1043 of the *Evidence Code*.³ This information is protected against disclosure unless a

23
24 ² Even assuming *arguendo* that plaintiff asserts that he obtained the information set forth in the motions
25 from another source (another Burbank officer), that source illegally disclosed the information in violation
26 of *Penal Code* § 832.7.

27 ³ In full, *California Penal Code* §832.7(a) states “Peace officer or custodial officer personnel records
28 and records maintained by any state or local agency pursuant to §832.5, or information obtained from
these records, are confidential and shall not be disclosed in any criminal or civil proceeding except by
discovery pursuant to §§ 1043 and 1046 of the *Evidence Code*. This section shall not apply to
investigations or proceedings concerning the conduct of peace officers or custodial officers, or an agency
or department that employs those officers, conducted by a grand jury, a district attorney’s office, or the

1 stringent procedure is followed under *Evidence Code* §§ 1043 and 1045. *City of Santa Cruz v.*
2 *Superior Court*, 190 Cal.App.3d 1669 (1987).

3 Moreover, this information is protected even if it could also be obtained from a different
4 source outside of the personnel file. *Hackett v. Superior Court*, 13 Cal.App.4th 96, 100 (1993);
5 *see also, City of San Diego v. Superior Court*, 136 Cal.App.3d 236, 239 (1981). Thus, the
6 privilege protects not just the personnel files and records themselves, **but also any information**
7 **or testimony disclosing the contents of those records.** *Hackett, supra*, 13 Cal.App.4th at 101.
8 In *Hackett, supra*, 13 Cal.App.4th at 98, the plaintiff served the defendant police officer
9 interrogatories asking for his home address, telephone number, place of birth, driver's license
10 number and educational background. Clearly, the officer would not have to refer to his personnel
11 file to provide this information. However, the *Hackett* court reviewed the plain language and
12 legislative history of the statute and held that it was clear that the privilege in *Penal Code* § 832.7
13 applies to all information in an officer's personnel file, and there is no exception for information
14 that could also be obtained "from the officer or elsewhere." *Id.*, at 101.

15 In *City of San Diego, supra*, 136 Cal.App.3d at 239 (citations omitted), the Court of
16 Appeal similarly rejected attempts to evade compliance with *Evidence Code* §§ 1043 and 1045 by
17 asking the officers questions about their disciplinary history at deposition:

18 It has often been stated a litigant may not obtain indirectly what is directly
19 privileged and immune from discovery. In our view, the statutes which protect
20 personnel records and information from such records also protect the identical
21 information about personnel history which is within the officers' personal
22 recollections. There would be no purpose to protecting such information in the
23 personnel records if it could be obtained by the simple expedient of asking the
24 officers for their disciplinary history orally.

25 While the fact that plaintiff oversaw internal affairs at the Burbank Police Department
26 during the relevant time period demonstrates that the attempt to reveal Jette's and Rosoff's
27 information in a publicly-filed motion is a tremendous breach of trust, the origin of such
28 confidential information is ultimately not legally material. The Court does not need to resolve the
transparent origin of the allegations in the § 1043 motion to protect the confidentiality thereof.

Attorney General's office."

1 guarded.” *City of Tulare v. Superior Court*, 169 Cal.App.4th 373, 383 (2008). Under this
2 statutory scheme, the trial court acts as the gatekeeper to balance the officers’ and police
3 departments’ privacy interests against the narrowly curtailed interests of the criminal defendant or
4 civil litigant to obtain truly relevant information bearing on the specific issues presented in the
5 case.⁴

6 Nevertheless, the job of protecting the privacy interests of the officers’ personnel
7 information does not rest solely on the courts’ decision regarding the merits of §1043 motions.
8 Section 1045(d) is a “generalized statutory limitation” on the discovery of peace officer personnel
9 records that expressly authorizes a protective order to be issued upon the filing of a motion by
10 either the police department or by the officer himself whose records are being sought. *Fletcher v.*
11 *Superior Court*, 100 Cal.App.4th 386, 397 (2002). The protective order shall be issued as “justice
12 requires to protect the officer or agency from unnecessary annoyance, embarrassment, or
13 oppression.” *Evidence Code* § 1045(d). This is separate from the provision in the Code which
14 authorizes entry of a protective order restricting the use of any records that may be disclosed only
15 to a “court proceeding pursuant to applicable law.” *Id.* § 1045(e); *Chambers v. Appellate*
16 *Division of Superior Court*, 42 Cal.4th 673, 682 (2007). If any information is ordered disclosed
17 at the end of the §1043 process, it should be subject to this kind of protective order.

18 A protective order at this stage of the proceedings is authorized to prevent misuse of the
19 information being sought and protect the express statutory privacy interests of Rosoff and Jette.
20 In this case, plaintiff’s motions would reveal extensive, purported, confidential police personnel
21 information under the guise of an attempt to show good cause to order disclosure. Importantly,
22 §1045(d) provides that the court should make orders to protect peace officers from annoyance,
23 embarrassment or oppression, and is notably not limited to accurate disclosures of confidential
24 information. The extensive, detailed discussion of purported personnel information contained in
25 plaintiff’s §1043 motions would easily meet this standard. [See plaintiff’s motion for Jette’s

26 ⁴ “Typically, the trial court discloses only the names, addresses, and telephone numbers of individuals
27 who have witnessed, or have previously filed complaints about, similar misconduct by the officer.
28 [Citation.] That practice ‘imposes a further safeguard to protect officer privacy where the relevance of the
information sought is minimal and the officer’s privacy concerns are substantial.’ [Citation.]” *Warrick v.*
Superior Court, 35 Cal.4th 1011, 1019 (2005). *See also, Galindo v. Superior Court*, 50 Cal.4th 1, 5 (2010).

1 records, at Notice, pp. ii:11-vi:21, Memorandum of Points and Authorities ("MPA"), pp. 1:10-21,
2 4:3-13, 6:13-26, 9:23-24, 13:9-13, Brizzolara Decl., ¶¶ 3-4, 6-7, 11, 12(a)-12(dd); plaintiff's
3 motion for Rosoff's records, at Notice pp. ii:11- iv: 9, v:1- 7, v: 21-24; MPA, pp. 1:11- 7:8, 8:20-
4 27, 11:5-8, 14:20-26; Brizzolara Decl., ¶¶ 3- 24, 29-31, 34, 35(a)-35(y).] Even if untrue in large
5 degree, the public filing of such information in plaintiff's name would come with the imprimatur
6 of being from someone who was at one time "in the know."

7 Moreover, in addition to the express authority under § 1045(d), the "trial court has
8 inherent discretion to allow documents to be filed under seal to protect against revelation of
9 privileged information." *Garcia v. Superior Court*, 42 Cal.4th 63, 71-72 (2007) (approving
10 procedure of a *Pitchess* motion declaration being filed under seal). Thus, under the authority of
11 § 1045(d)'s provision for the court to make "any order which justice requires to protect the officer
12 or agency," and recent Supreme Court authorities addressing the confidentiality of the § 1043
13 process, an order requiring the § 1043 motions and all papers responsive to those motions to be
14 filed under seal logically flows from the spirit and the letter of the law.

15
16 **V. Plaintiff's § 1043 Motions And Related Papers Must And Should Be Sealed**

17 The *California Rules of Court* set forth the procedure for sealing records that are not
18 protected from disclosure as a matter of law. However, those "**rules do not apply to records**
19 **that are required to be kept confidential by law.**" *California Rules of Court*, Rule
20 2.550(a)(2).⁵ Here, the alleged personnel information and records set forth in the §1043 motions
21 are protected from disclosure as a matter of law under *Penal Code* § 832.7 because they purport

22 ⁵ Even if the showing set forth in *Rule of Court* 2.550(d) were required (which it is not), it is satisfied
23 here. That Rule provides that a court may order that a record be filed under seal if the facts establish that:
24 (1) there exists an overriding interest that overcomes the right of public access to the record; (2) the
25 overriding interest supports sealing the record; (3) a substantial probability exists that the overriding
26 interest will be prejudiced if the record is not sealed; (4) the proposed sealing is narrowly tailored; and (5)
27 no less restrictive means exist to achieve the overriding interest. Here, Jette and Rosoff's overriding
28 interest in the privacy and confidentiality of their records justifies allowing documents to be lodged or
filed under seal until the Court can make a substantive ruling on the §1043 motions. Sealing the §1043
motions will have no impact on the Court's consideration of or the substantive relief sought in the
motions, the public has no right to access to confidential personnel information (and is expressly
prohibited by statute from having such access), plaintiff will not be prejudiced by this measure, and the
proposed order is narrowly tailored to protect Jette and Rosoff's privacy rights in the least restrictive way
possible.

1 to reveal confidential personnel information of a peace officer. The courts have recognized that
2 the appropriate remedy to prevent disclosure of confidential police personnel information is to
3 issue an order sealing the records. *Fagan v. Superior Court, supra*, at 619.

4 Jette and Rosoff therefore request that the § 1043 motions, including their attachments, be
5 filed under seal to protect the right to privacy in confidential records which are protected from
6 disclosure as a matter of law. Jette and Rosoff also request that the Court issue an Order that the
7 Opposition and Reply Memorandum regarding the §1043 motions likewise be filed under seal.
8 Alternatively, Jette and Rosoff request that the § 1043 motions and related records be sealed until
9 such time as they can seek writ relief from the Court of Appeal sealing these records. Jette and
10 Rosoff previously filed their declarations in connection with their *ex parte* application on
11 September 22, 2010. Inasmuch as those declarations constitute admissible evidence supporting
12 this motion, Jette and Rosoff incorporated them by reference as though fully presented and filed
13 concurrently herewith. There is no countervailing interest that counsels against sealing these
14 documents, as there is no prejudice to plaintiff in doing so, and no benefit to the dissemination of
15 these materials to the public at large.

16
17 **VI. Conclusion**

18 Real Parties In Interest Jay Jette and Eric Rosoff respectfully request that the § 1043
19 motions to be filed by plaintiff, including their attachments, be sealed and only subject to
20 inspection by the parties until such other lawful Order as may compel their unsealing. In
21 addition, Jette and Rosoff request that the Court issue an order allowing the §1043 oppositions
22 and reply papers to likewise be filed under seal.

1 Alternatively, Real Parties request that the §1043 motions and related records be sealed
2 until such time as they can seek a writ from the Court of Appeal sealing these records.
3

4 Dated: September 22, 2010

STONE BUSAILAH, LLP

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6 By: Michael P. Stone
7 Michael P. Stone,
8 Attorneys for Real Parties In Interest Jay
9 Jette and Eric Rosoff
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